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6 **UNITED STATES BANKRUPTCY COURT**  
7 **IN AND FOR THE DISTRICT OF ARIZONA**  
8

9 **In Re**

10 **MARC S. CANEVA,**

11 **Debtor.**  
12

13 **SUN COMMUNITIES OPERATING**  
14 **LIMITED PARTNERSHIP, a Michigan**  
15 **limited partnership,**

16 **Plaintiff,**

17 **v.**

18 **MARC S. CANEVA,**

19 **Defendant.**  
20

**Chapter 7 Proceedings**

**Case No. BR-03-20735-PHX-CGC**

**Adversary No. 04-00822**

**UNDER ADVISEMENT DECISION  
RE: DEBTOR'S MOTION TO  
RECONSIDER JUDGMENT  
DENYING DISCHARGE**

21 On January 24, 2006, this Court issued its Under Advisement Decision Re: Plaintiff's  
22 Motion for Summary Judgment and Defendant's Cross-Motion for Partial Summary Judgment, in  
23 which the Court granted Plaintiff's request for summary judgment pursuant to 11 U.S.C. section  
24 727(a)(3). As a result, it was unnecessary to address Debtor's cross-motion for summary judgment  
25 under 11 U.S.C. section 523(a). Debtor seeks reconsideration of this decision.

26 As a preliminary matter, Debtor states in his motion for reconsideration that he seeks relief  
27 pursuant to Federal Rule of Civil Procedure ("FRCP") 60(b), as made applicable to bankruptcy  
28 proceedings by Rule 9024 of the Federal Rules of Bankruptcy Procedure ("FRBP"). However, in  
Whether relief is sought under Rule 60(b) or Rule 59, however, is of little import. The distinction

1 between the two Rules is primarily a procedural distinction affecting the parties' appellate rights and  
2 proceedings. In order to toll the time for filing an appeal, the party requesting reconsideration must  
3 file a request for reconsideration under Rule 59 within ten days of the entry of the judgment, which  
4 Debtor did. Failure to seek reconsideration within the ten days subjects the movant to having to  
5 proceed with its appellate rights under the Rules without any tolling. Relief from the judgment can  
6 then only be granted by way of Rule 60(b).

7 With that said, a motion for reconsideration is generally brought under Rule 59 and applies  
8 to any order appealable to an appellate court. F.R.C.P. 59 and F.R.B.P. 9023. In turn, motions for  
9 reconsideration filed under Rule 59 are governed by the grounds for relief set forth in Rule 60(b).  
10 The Ninth Circuit has consistently held that relief under Rule 59 should not be granted "absent  
11 highly unusual circumstances" and only when presented with newly discovered evidence, where the  
12 court committed clear error, or there is an intervening change in controlling law. *See 389 Orange*  
13 *Street Partners v. Arnold*, 179 F.3d 656 (9<sup>th</sup> Cir. 1999).

14 Rule 60(b), in turn, provides six grounds upon which relief from the Court's judgment can  
15 be granted. Debtor makes several arguments for reconsideration, but he fails to identify on which  
16 part of Rule 60(b) he is relying. Debtor first argues that this Court ignored the fact that Debtor  
17 provided a significant amount of information to not only Plaintiff, but also the Trustee, and that such  
18 information "encompassed information on all of the entities." According to Debtor, because  
19 Plaintiff represented it was working closely with the Trustee, and the Trustee was riding Plaintiff's  
20 coattails, that Plaintiff must have, or at least should have, been privy to the large amount of  
21 information he provided to the Trustee. Second, Debtor contends that the Trustee was more than  
22 satisfied with Debtor's disclosures and productions as it did not pursue a 727 action itself or join  
23 with Plaintiff. To the contrary, the Trustee filed a Report of No Distribution, averring that he had  
24 "made a diligent inquiry into the financial affairs of the debtor." Third, Debtor attaches as exhibits  
25 a number of tax returns for some of his business entities for tax years 2001-2003.

26 In his response, Debtor changes tack a bit and acknowledges that Plaintiff is correct that Rule  
27 59 governs motions for reconsideration and allows reconsideration where there is manifest error of  
28 fact, manifest error of law or newly discovered evidence. He states, however, that Plaintiff's

1 analysis misses the point and that the real question here is whether a genuine issue of material fact  
2 existed precluding summary judgment and requiring, instead, an evidentiary hearing.

3 The Court finds that it is Debtor, however, that misses the point. Reconsideration is not an  
4 opportunity to simply reargue the initial proceeding. To a large extent, Debtor reiterates his earlier  
5 argument that he provided lots of documents to Plaintiff and/or the Trustee and the sole question is  
6 whether those documents are sufficient. That argument was rejected by this Court for the reasons  
7 set forth in its Under Advisement Decision.

8 Further, none of the other arguments satisfy any of the six categories in Rule 60(b). Debtor  
9 has not alleged any mistake, inadvertence, surprise or excusable neglect under Rule 60(b)(1). Nor  
10 has Debtor made a claim of fraud, misrepresentation or other misconduct by Plaintiff for purposes  
11 of 60(b)(3). There is no claim the judgment is void or that the judgment has been satisfied,  
12 discharged, or vacated for purposes of Rule 60(b)(4) and (5). With respect to 60(b)(2) – newly  
13 discovered evidence, Debtor does not make any claim that he has only recently discovered evidence  
14 of his financial condition unknown previously. While he discloses a variety of documents that  
15 appear not to have been turned over to Plaintiff directly, there is no claim that those are newly  
16 discovered documents. Debtor’s argument is in fact that he turned these over to the Trustee. This  
17 arguments misses the point, however. As stated before, regardless of whether Debtor turned  
18 documents over to the Trustee or not, the fact remains that there was still *no* information turned over  
19 to *anyone* with respect to several entities Debtor admitted being an owner or principal of and that  
20 conducted business or held property or other interests of value. This hurdle cannot be overcome by  
21 simply arguing that other documents related to other entities were turned over.

22 That leaves Debtor with subsection (b)(6) – “any other reason justifying relief from the  
23 operation of the judgment.” Debtor’s arguments set forth *supra*, however, do not rise to the level  
24 required by (b)(6). These documents were available at all times to Debtor and were never provided  
25 to Plaintiff directly, let alone to this Court during the summary judgment proceedings. There is no  
26 explanation for why this was not done. Further, a review of the documents provided still does not  
27 get the Court over the hurdle that there are still documents generally required in business that Debtor  
28 admittedly never created in the first instance or kept.

1 For example, Debtor provides a number of tax returns for some of his businesses. These  
2 returns were prepared postpetition for prepetition tax years. The Court also agrees with Plaintiff that  
3 merely providing copies of tax returns created post-petition and from records unknown and  
4 undisclosed, does little to allow anyone to determine Debtor's financial condition. And, while some  
5 of the tax returns make reference to other entities owned by Debtor, the information provided by  
6 these tax returns on those entities provides no meaningful financial information on these businesses.


7  
8 Further, and by way of example, the documents provided still do not address a company  
9 Debtor says he owned called Majestic Oaks, and out of which Debtor allegedly paid Anita Bowden  
10 \$500,000. The Court has combed these exhibits and has not found a single mention of Majestic  
11 Oaks. This is not a small transaction for which missing documentation is excusable. Similarly, no  
12 financial documents were provided as to Center Services, LLC, Venture Inn, LLC, or Park Model  
13 Sales, LLC. While those names appear in some of the tax returns for other entities, no financial  
14 information about the businesses is provided.

15 Debtor's mistake is his continuing focus on the *quality* and *quantity* of what he produced.  
16 That does not explain the complete lack of any financial information for several of Debtor's  
17 businesses. Debtor is correct that the analysis under Section 727 requires not only a determination  
18 that a debtor failed to maintain and preserve adequate records, but also that such a failure makes it  
19 impossible to determine a debtor's financial condition. What Debtor ignores is the fact that the  
20 complete absence of any information on certain admittedly-owned entities makes it impossible by  
21 definition to ascertain debtor's financial condition. The information simply is nonexistent. The  
22 burden then shifts to Debtor to establish how its financial condition can in fact be determined  
23 without the information. Debtor has not done that. Debtor has simply turned over a variety of  
24 financial documents relating to some of his businesses, concluded that these are sufficient, and then  
25 left it to Plaintiff or the Court to figure it out.

26 For these reasons, Debtor's motion for reconsideration is denied. Counsel for Plaintiff is to  
27 lodge a form of order consistent with this decision for signature.

28 So ordered.

1 DATED: May 1, 2006

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4 CHARLES G. CHASE II  
United States Bankruptcy Judge

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6 **COPY** of the foregoing mailed and/or via  
facsimile this 1st day of May, 2006, to:

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